

**Amendment to the Claims:**

This listing of Claims will replace all prior versions and listings of the Claims in the application.

**Listing of Claims:**

1. (Withdrawn and Previously Amended) A method of applying and monitoring an epidermal surfactant applied to the skin of a person comprising the steps of:

placing an image along the surface of a substrate; and

depositing a surfactant on a defined area along the surface of the substrate;

wherein the image operates to indicate the quantity or the continuing effectiveness of the surfactant.

2. (Cancelled)

3. (Cancelled)

4. (Cancelled)

5. (Cancelled)

6. (Cancelled)

7. (Currently Amended) An article for applying and monitoring a surfactant,  
the article comprising:

a substrate having an image applied to the surface of said substrate;  
and

a surfactant placed along said surface of said substrate ~~such that said~~  
~~surfactant covers~~ and covering at least a portion of said image;

wherein said surfactant is attached to said substrate such that said  
surfactant is released at a rate effective for distributing said surfactant along the  
skin of the user;

wherein said image indicates the quantity or the continuing effectiveness  
of said surfactant.

8. (Original) The article of Claim 7 wherein said surfactant is an epidermal  
surfactant.

9. (Original) The article of Claim 7 wherein said surfactant is selected from  
the group consisting of lathering agents, fragrance additives, vitamin compounds,  
skin treatment agents, anti-inflammatory activates, topical anesthetics, anti-  
microbial activates, anti-fungal activates, anti-viral agents, enzymes, skin  
exfoliating agents, anti-acne activates, anti-wrinkle, anti-skin atrophy and skin  
repair activates, skin barrier repair activates, non-steroidal cosmetic soothing  
activates, artificial tanning agents and accelerators, skin tightening activates,

sunscreen activators, sebum stimulators, sebum inhibitors, anti-oxidants, protease inhibitors, anti-itch ingredients, hair growth inhibitors, 5-alpha reductase inhibitors, desquamating enzyme enhancers, anti-glycation agents, and mixtures thereof.

10. (Previously Amended) The article of Claim 7 wherein said image is ink selected from the group consisting of thermochromic inks, photochromic inks, hydrochromic inks, edible inks, and piezochromic inks.

11. (Currently Amended) The article of Claim 7 wherein said image is a vegetable oil based printing ink.

12. (Previously Amended) The article of Claim 7 wherein said image is a decal comprising a material that dissolves in water.

13. (Previously Amended) The article of Claim 7 wherein said image is a coating comprising a material that dissolves in water.

14. (Previously Amended) The article of Claim 12 wherein said decal is a material selected from the group consisting of hydrogels, compressed sugars, compressed salts, polymers and oligomers, gelatin, pectin, corn starch, and soaps.

15. (Currently Amended) The article of Claim 13 wherein said coating is a material selected from the group consisting of hydrogels, ~~compresses~~ compressed sugars, compressed salts, polymers and oligomers, gelatin, pectin, corn starch, and soaps.

16. (Currently Amended) The article of Claim 7 wherein said substrate is a material capable of absorbing and retaining a ~~substantial~~ quantity of the surfactant.

17. (Currently Amended) The article of Claim 7 wherein the substrate is a material selected from the group consisting of paper, cloth or natural or synthetic fiber, a ~~sponge-like~~ open or closed pore synthetic composition, and woven and non-woven materials.

18. (Previously Amended) The article of Claim 7 wherein said substrate is a material selected from the group consisting of hydrogel, compressed sugars, compressed salts, polymers and oligomers, gelatin, corn starch, and soaps.

19. (Original) The article of Claim 7 further comprising means for securing to the skin of the user.

20. (Original) The article of Claim 7 wherein said image operates by disappearing as the surfactant dissipates.

21. (Original) The article of Claim 7 wherein said image is a transparent image that becomes visible as the surfactant dissipates.

22. (Original) The article of Claim 7 wherein said image changes color as the surfactant dissipates.

23. (Currently Amended) ~~The article of Claim 7~~ An article for applying and monitoring a surfactant comprising:

a substrate having an image applied to the surface of said substrate;

wherein said substrate has a first surface having a first surfactant thereon and a second surface having a second surfactant thereon;

wherein said image indicates the quantity or the continuing effectiveness of said first surfactant; and

wherein said first surfactant is placed along said first surface of said substrate such that said first surfactant covers at least a portion of said image.

24. (Original) The article of Claim 7 wherein the image is covered by a coating effective for controlling the disappearance time of the image.

25. (Original) The article of Claim 24 wherein said coating is formed from a wax.

## **RESPONSE**

Claims 1 and 7 - 25 remain in this application. Claim 1 has been withdrawn. Claims 15 and 23 have been objected to and Claims 7 – 22, 24 and 25 have been rejected. Claim 15 has been amended to correct a typographical error. Claims 11, 16 and 17 have been amended to make the Claims more clear. Claim 23 has been amended to be placed in independent form including all of the limitations of the base claim and any intervening claims.

**The Rejection of Claims 9 , 11, 16, 17, 24 and 25 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is respectfully traversed.**

With respect to Claim 9, the Examiner submits that it is unclear how some of the species for the surfactants function as surfactants. The Applicants submit that a “surfactant” is defined as a surface active substance (See Merrian Webster’s Collegiate Dictionary, 10<sup>th</sup> ed.). The Applicants further submit that Claim 9 identifies the surfactant to be selected from the group consisting of lathering agents, fragrance additives, vitamin compounds, skin treatment agents, anti-inflammatory activates, topical anesthetics, anti-microbial activates, anti-fungal activates, anti-viral agents, enzymes, skin exfoliating agents, anti-acne activates, anti-wrinkle, anti-skin atrophy and skin repair activates, skin barrier repair activates, non-steroidal cosmetic soothing activates, artificial tanning agents and

accelerators, skin tightening activates, sunscreen activates, sebum stimulators, sebum inhibitors, anti-oxidants, protease inhibitors, anti-itch ingredients, hair growth inhibitors, 5-alpha reductase inhibitors, desquamating enzyme enhancers, anti-glycation agents, and mixtures thereof. Such components can operate as a "surfactant" (a surface active substance) as used in the subject application. The Applicants further submit that this definition and use of the term "surfactant" is consistent with the teaching of the subject application.

With respect to Claim 11, the Examiner takes the position that the phrase "vegetable based printing ink" is unclear. In view of the rejection, the Applicants have amended Claim 11 to make it more clear.

With respect to Claim 16, the Examiner takes the position that the adjective "substantial" in describing the quantity of surfactant that is absorbed and retained renders the Claim indefinite. The Applicants submit that the term "substantial" has been used for many years in patent prosecution. However, to overcome the rejection, the Applicants have amended Claim 16 to make the Claim more clear and definite.

With respect to Claim 17, the Examiner takes the position that the term "Sponge-like" in describing a synthetic composition is indefinite, as it cannot readily be determined what type of materials would qualify as being "sponge-like." The Applicant submits that the term "sponge-like" synthetic composition is described

in the subject application as being such as that of polyurethane foam, or other woven or non-woven materials (see page 7, lines 14 and 15). The Applicants respectfully submit that one skilled in the art would understand the structure of a polyurethane foam and would therefore fully understand the term "sponge-like" as used in this application. However, in view of the Examiner's position, the Applicants have amended the claim to being an open pore or a closed pore material.

With respect to Claim 24, the Examiner takes the position that Claim 24 states that "the image is covered by a coating" that is "effective for controlling the disappearance time of the image", and Claim 24 depends upon Claim 7. However, Claim 7 states the limitation that the surfactant is placed along the surface of the substrate, and that the surfactant covers at least a portion of the image. As a result, the Examiner believes that it is unclear as to whether the disappearance controlling coating is applied to the image, before the surfactant is applied thereon, or whether the coating covers the surfactant, or whether the surfactant and the coating are non-continuous and can be applied as parallel coatings that each cover a portion of the image without there being any overlap between the two. In view of the rejection, the Applicants have amended Claim 7 to claim an article comprising a substrate, an image, and "a surfactant covering at least a portion of said image." Therefore as amended, Claim 7 requires that the surfactant covers at least a portion of the image. This would apply even if the image had a coating thereon. Thus, an image having a coating or not having a



coating can be covered by a surfactant. Accordingly, Claim 24 in light of the amendment to Claim 7 is now more clear and no longer can be considered as being indefinite. Claim 25 should also no longer be considered as being indefinite.

In view of the foregoing, the rejection of Claims 9, 11, 16, 17, 24 and 25 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention should be withdrawn.

**The rejection of Claims 7 - 22 as being rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication of Forest et al. (2002/0022008) ("Forest") is respectfully traversed.**

The Examiner takes the position that Forest teaches an article for applying and monitoring a surfactant ("sun protection kit") that comprises a substrate ("carrier") having an image ("indicator") applied to the surface of the substrate, and a surfactant ("sunscreen") placed along the surface of the substrate such that the surfactant covers a portion of the image. The Examiner also takes the position that Forest teaches that the image indicates the continuing effectiveness of the surfactant. Further, the Examiner states that Forest provides that the surfactant is an epidermal surfactant given that the surfactant is a sunscreen, but also a surfactant that can comprise a mixture that includes dyes, fragrances,

antimicrobial agents, and other additives. Forest also provides that the image/indicator is a photochromic ink, and that the diluents that are present include such solvents as castor oil, which reads upon the limitation of a vegetable based printing ink. Further, the Examiner states that the image/indicator can be a decal or a coating, and that the image can be a material that dissolves in water.

The Examiner further takes the position that Forest teaches that the substrate is a non-woven material, that the substrate can absorb/retain a quantity of the surfactant, and that the substrate can also be a material that dissolves in water, such as polymers, gelatin, starches, pectin, etc. Also, Forest provides that the article includes a way to secure the article to one's skin and teaches that the image is such that it can disappear as the surfactant dissipates, that it can start out as being transparent and then becomes visible as the surfactant dissipates, and/or that the image can change color as the surfactant dissipates.

Under 35 USC 102, the MPEP provides that “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” MPEP 2131 (quoting *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). The alleged prior art invention “must be shown in as complete detail as contained in the... claim.” MPEP 2131 (quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). As shown above, the reference cited by the Examiner does not demonstrate each and

every element of the rejected claims, as amended, and there is no showing that Applicant's device is inherent in the reference invention.

Independent Claim 7, as amended, provides:

7. An article for applying and monitoring a surfactant, the article comprising:  
a substrate having an image applied to the surface of said substrate;  
and  
a surfactant placed along said surface of said substrate and covering at least a portion of said image;  
wherein said surfactant is attached to said substrate such that said surfactant is released at a rate effective for distributing said surfactant along the skin of the user;  
wherein said image indicates the quantity or the continuing effectiveness of said surfactant.

Unlike the UV indicator of Forest which is applied to the skin of the user and then a sunscreen is applied over the user's skin and the indicator, the article of the subject invention is used for the purpose of **applying and monitoring** a surfactant. The article is a unitary structure and as claimed, the article comprises a substrate and a surfactant to be applied to the skin of the user. During use, the surfactant is released from the substrate and is applied to the skin of the user. For example during washing, as the user applies water to the article and begins to rub the surface of the surfactant, the surfactant dissolves and is applied over the user's skin. For another example, the article can have the appearance of a tattoo and is attached to the skin of the user. The surfactant can then be applied to the skin of the user such as by rubbing the surface article.

As claimed, the article of the subject invention further comprises an image applied to the surface of the substrate. During use, as the surfactant dissipates the image will change in appearance thereby allowing the user to monitor the quantity and/or effectiveness of the surfactant.

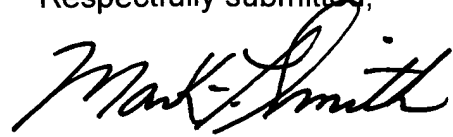
Accordingly, the Applicants respectfully submit that nowhere in Forest is there a suggestion or a teaching with regard to an article for applying **and** monitoring a surfactant. For example, Forest discloses an indicator which is applied to the user and is effective for changing in appearance such as when subjected to UV light. After the indicator is applied to the user, the user then applies a sunscreen to his/her skin as well as covering the indicator. Thus, when the indicator changes in appearance the user knows that he/she should apply additional sunscreen. *Accordingly, the user applies sunscreen to the indicator whereas in the subject application the user uses the article having an indicator to apply the surfactant on the skin of the user.* Thus the article of the claimed invention is structurally and functionally different from the sun protection kit disclosed in Forest.

In view of the foregoing Amendment and Remarks, the Applicants respectfully request reconsideration of the Application and that a timely Notice of Allowance be issued in this case.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark F. Smith". The signature is fluid and cursive, with the first name "Mark" and last name "Smith" clearly distinguishable.

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